

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
BRIEF**

75-7457

To be argued by
CHARLES SOVEL

In The
United States Court of Appeals

For The Second Circuit

—
JAMES MORRISSEY,

Plaintiff-Appellant-Appellee,

vs.

NATIONAL MARITIME UNION OF AMERICA,

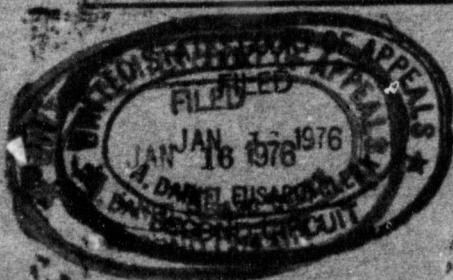
Defendant-Appellant-Appellee,

and

JOSEPH CURRAN, SHANNON J. WALL and CHARLES SNOW,

Defendants-Appellants.

**ANSWERING BRIEF ON BEHALF OF
DEFENDANT-APPELLANT-APPELLEE
NATIONAL MARITIME UNION OF
AMERICA**



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TABLE OF CONTENTS

	Page
Preliminary Statement.	1
Statement of the Case.	2
Argument:	
Point I. The decision of the trial court granting judgment N.O.V. in favor of the National Maritime Union with respect to the award of punitive damages should be affirmed.	2
Conclusion.	5

TABLE OF CITATIONS

Cases Cited:

Gulickson v. Forest, 290 F. Supp. 457, 469 (E.D.N.Y. 1968).	2
Madden v. Atkins, 4 N.Y. 2d 283 (1958).	3
Martin v. Curran, 303 N.Y. 276, 78 N.Y.S. 2d 506, 101 N.E. 2d 683 (1951).	2,3

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vs.

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Defendant-Appellant-Appellee,

and

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CHARLES SNOW,

Defendants-Appellants.

ANSWERING BRIEF ON BEHALF OF
DEFENDANT-APPELLANT-APPELLEE,
NATIONAL MARITIME UNION OF
AMERICA

Preliminary Statement

This brief is submitted on behalf of defendant-appellant-appellee, National Maritime Union of America, in response to plaintiff's appeal from the granting of Judgment N.O.V. with respect to the awards of punitive damages against the National Maritime Union of America.

National Maritime Union of America has filed a separate appeal from the refusal of the District Court to enter Judgment N.O.V. with respect to plaintiff's claim for compensatory damages and a separate appellant's brief has been filed in connection with that appeal.

STATEMENT OF THE CASE

The facts of the case are as set forth in the Core Brief filed on behalf of all defendants-appellants.

ARGUMENT

POINT I.

THE DECISION OF THE TRIAL COURT GRANTING JUDGMENT N.O.V. IN FAVOR OF THE NATIONAL MARITIME UNION WITH RESPECT TO THE AWARD OF PUNITIVE DAMAGES SHOULD BE AFFIRMED

The trial judge granted Judgment N.O.V. in favor of defendant National Maritime Union of America with respect to the award of punitive damages under the authority of Martin v. Curran, 303 N.Y. 276, 78 N.Y.S. 2d 506, 101 N.E. 2d 683 (1951), and Gulickson v. Forest, 290 F. Supp. 457, 469 (E.D.N.Y. 1968), and because the alleged acts of the union's officers and employees which

formed the basis of the plaintiff's claim when neither authorized nor within the scope of the authority of these officers and employees (714A-715A). Plaintiff's brief is primarily directed toward challenging the authority of Martin v. Curran, *supra*, and arguing that the acts of the officers and employees in question were either within the scope of their authority or were ratified.

Insofar as plaintiff attacks the authority of Martin v. Curran, *supra*, the fact remains that that case represents the law of the State of New York, has never been repudiated, and the suggestion that its authority has been limited by Madden v. Atkins, 4 N.Y. 2d 283 (1958), or that it rest solely on a question of interpretation of the pleadings, is mere wishful thinking on the part of plaintiff's counsel. More important, however, is that plaintiff's appeal simply is not supported by the facts of the case. Plaintiff's suit is predicated on his contention that the notice prohibiting distribution of literature inside the hiring hall was not duly promulgated, and therefore not within the scope of the authority of the individual defendants. The trial court charge, at the plaintiff's request, that the notice was not duly

promulgated. Plaintiff cannot now have it both ways and recover a verdict against the individual defendants for acting outside the scope of their authority and, at the same time, recover a verdict against their employer, NMU, on the theory that their acts were within the scope of their authority.

In addition, on plaintiff's appeal we are dealing solely with the question of punitive damages. The basis for awarding punitive damages is malice. In the instant case there is absolutely no evidence in the record whatsoever of any malice toward the plaintiff on the part of the union as a union. Rather, all of the evidence of malice introduced by the plaintiff related to the individual defendants, principally defendant Curran, malice which cannot be imputed to the union as a union under any known theory of respondent superior. Plaintiff's briefs are peppered with broad charges of malice and personal hatred on the part of the individual defendants, but none of the acts on which plaintiff relies to show malice were acts done in furtherance of the union's business as a union. Accordingly, on this basis alone, the decision granting

Judgment N.O.V. with respect to the award of punitive damages should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the decision granting Judgment N.O.V. on the claim for punitive damages should be affirmed.

Respectfully submitted,

ABRAHAM E. FREEDMAN
Attorney for Defendant-
Appellant-Appellee
National Maritime Union
of America

OF COUNSEL:

CHARLES SOVEL

UNITED STATES COURT OF APPEALS: 2nd CIRCUIT

Inde: No.

JAMES MORRISSEY,

Plaintiff-Appellant-Appellee,

- against -

NATIONAL MARITIME UNION,

Defendant-Appellant-Appellee

-and-

JOHN CURRAN, et al.,

Defendants Appellants

Affidavit of Service by Mail

STATE OF NEW YORK, COUNTY OF

ss.:

I, Velma N. Howe

being duly sworn,

depose and say that deponent is not a party to the action, is over 18 years of age and resides at

298 Macon Street, Brooklyn, New York 11216

That on the 16th day of January 1976, deponent served the annexed

Harold A. Kohn

Brief upon Kenneth J. Singer

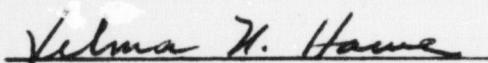
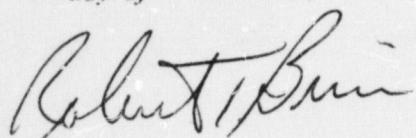
Defendant-Appellant Charles Snow 1700 Market Street ^{attorney(s) for} Philadelphia,

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VELMA N. HOWE

UNITED STATES COURT OF APPEALS:SECOND CIRCUIT

JAMES MORRISSEY,

Plaintiff-Appellant-Appellee,

Index No.

- against -
NATIONAL MARITIME UNION,Defendant-Appellant-Appellee,
and

JOHN CURRAN, et al.,

Defendants-Appellants.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

ss.:

I, Victor Ortega, being duly sworn,
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1027 Avenue St. John, Bronx, New York

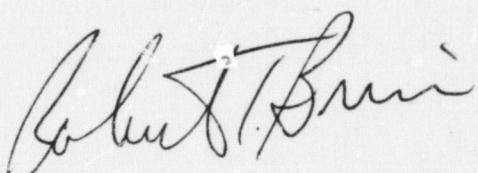
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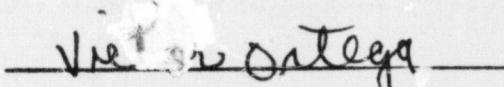
deponent served the annexed Brief upon

see attached

the in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the herein,

Sworn to before me, this 16th
day of January 1976





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